

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

KATHY KINVILLE,

Appellant,

v.

EMPLOYMENT SECURITY DEPARTMENT,

Respondent.

) Case No. DEMO-00-0007

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) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

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**I. INTRODUCTION**

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on May 18, 2001. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

On May 23, 2001, Appellant submitted a post-hearing brief. By letter dated June 4, 2001, Respondent objected to the Board's consideration of the post-hearing brief. Because the parties did not agree to submit post-hearing briefs prior to the close of the hearing, the Board did not consider Appellant's post-hearing brief in reaching its decision.

1.2 **Appearances.** Appellant Kathy Kinville was not present. Sam Kinville appeared on Appellant's behalf. Colin Jackson, Assistant Attorney General, represented Respondent Employment Security Department.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of demotion for the causes of neglect of duty and willful violation of published employing agency policy. Respondent alleged that Appellant treated customers in an unprofessional and discourteous manner.

1.4 Citations Discussed. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

## II. FINDINGS OF FACT

2.1 Appellant Kathy Kinville is a Tax Specialist 1 and permanent employee for Respondent Employment Security Department at the Seattle South District Tax Office. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on May 5, 2000.

2.2 By letter dated May 3, 2000, Kathy Baros Freidt, Deputy Commissioner, informed Appellant that she was being demoted from her position as a Tax Specialist 3 to a Tax Specialist 1, effective May 22, 2000. Ms. Freidt charged Appellant with neglect of duty and willful violation of employing agency rules and regulations for treating customers in an unprofessional and discourteous manner.

2.3 Appellant began her employment with the department in 1982. Appellant has a history of receiving oral counseling, written reprimands and formal disciplinary action including:

- A 10-day suspension by letter dated August 21, 1998 for neglect of duty and willful violation of employing agency rules and regulations for treating her supervisor and an agency client in a rude and unprofessional manner when she became upset and shouted at the client and when she shouted at and hung the phone up on her supervisor.

- A letter of reprimand dated November 8, 1996, for treating a client in a rude and unprofessional manner.
- A letter of reprimand dated July 17, 1996, for two incidents where she treated clients in a rude and unprofessional manner.

2.4 As a Tax Specialist 3, Appellant performed a number of unemployment insurance tax services to state businesses/employers. As a senior-level professional, Appellant worked independently in registering business employers with accounts and unemployment insurance claims, performed account services/maintenance, and responded to account and billing inquiries. Appellant also conducted on-site visits and audits with employers; performed collection work by securing delinquent tax reports used in the insurance claims process; and collected delinquent taxes. Due to the nature of the work, the Tax Specialist 3 position can be stressful and requires a high degree of customer service and the ability to maintain effective working relationships.

2.5 Respondent's Policy 1016 addresses employee conduct and instructs them to be courteous, tactful and helpful in their contact with the public whether in person or over the phone. The policy further instructs employees to exercise sound judgment in hostile situations by maintaining self-control and seeking appropriate assistance when necessary to defuse a situation. Appellant was aware of Respondent's policies. Appellant also participated in customer service training on three separate occasions.

2.6 Martha Beard, currently retired, was the District Tax Office Administrator and Appellant's supervisor when the discipline here was imposed. Although Appellant's position is located in the field, Ms. Beard had daily telephonic contact with Appellant. Ms. Beard worked with Appellant on Appellant's poor and discourteous personal interactions with customers and she directed Appellant to modify her behavior and to build positive relationships with the individuals with whom she

1 interacted. Ms. Beard explained the agency's policies and expectations regarding employee conduct  
2 and they discussed techniques Appellant could use to disengage herself from tense situations. Ms.  
3 Beard cautioned Appellant about displaying hostility or angry outbursts, and she believed that  
4 Appellant understood her duty to behave herself in a professional and courteous manner. However,  
5 Ms. Beard noted that Appellant continued to disregard agency expectations regarding workplace  
6 behavior and appropriate customer service.

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8 2.7 By letter dated December 6, 1999, Sissi E. Longthorpe, an accountant with Continental  
9 Accounting Services, wrote Ms. Beard a letter of complaint regarding an interaction she had with  
10 Appellant in early November 1999. Ms. Longthorpe wrote that Appellant was rude, shouted at her,  
11 and asked about her professional qualifications during a telephone conversation.

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13 2.8 On December 15, 1999, Jeanne B. Ramirez, a Revenue Officer with the Department of  
14 Labor and Industries, wrote to Ms. Beard about an interaction she had with Appellant on November  
15 10, 1999. Ms. Ramirez wrote that Appellant left her a voice mail message in which Appellant left a  
16 request for information and stated that she was "upset" by Ms. Ramirez' voice mail. When Ms.  
17 Ramirez returned Appellant's call, Appellant was abrupt and explained that she was upset because  
18 she reached Ms. Ramirez' voice mailbox rather than a person. Ms. Ramirez called back a short  
19 while later to complain to Appellant's supervisor, however, her call was forwarded to Appellant.  
20 Ms. Ramirez told Appellant that she was reporting the incident to Appellant's supervisor because  
21 she was bothered by the interaction, felt Appellant was defensive and abrupt, and felt there was "a  
22 problem" if Appellant spoke to customers in the same manner. Appellant apologized, stated that  
23 she did not mean to offend Ms. Ramirez. When Ms. Ramirez attempted to respond, Appellant  
24 continued to talk and would not allow Ms. Ramirez to "get a word in." Ms. Ramirez ended the  
25 conversation and subsequently reported the interaction.

1 2.9 On December 23, 1999, Ms. Beard provided Appellant with copies of the letters of  
2 complaint.

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4 2.10 In response to the complaints, Appellant wrote, "communications in these conversations  
5 definitely went awry." Regarding Ms. Longthorpe's complaint, Appellant wrote that she never  
6 intended to offend her and that she thought Ms. Longthorpe could not hear her voice and that her  
7 voice usually projected loudly. Regarding Ms. Ramirez' complaint, Appellant wrote that it was  
8 Ms. Ramirez who called to tell her off and yelled at her. Appellant wrote that she made "an extra  
9 special effort to use a pleasant tone of voice and remain professional, I'm afraid I must have not  
10 been able to because of the tremendous pain I was in at the particular time." Appellant stated that  
11 she was under extreme back pain during that time, had a lot going on at work and was doing the  
12 best she could.

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15 2.11 Based on a preponderance of the evidence, we find that Appellant's interactions with Ms.  
16 Longthorpe and Ms. Ramirez were unprofessional and discourteous.

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18 2.12 Ms. Freidt was Appellant's appointing authority. Prior to determining whether misconduct  
19 occurred, Ms. Freidt reviewed the written complaints and information from the pre-disciplinary  
20 meeting held with Appellant, her attorney and human resources staff. Ms. Freidt considered  
21 Appellant's responses that she was experiencing extreme back pain during the timeframe, that she  
22 thought one of the customers was hard of hearing, and that the voicemail she left was not a person-  
23 to-person contact. However, Ms. Freidt did not find Appellant's reasons mitigated her behavior.  
24 Ms. Freidt concluded that Appellant failed to treat key external employers with courtesy and  
25 professionalism. Ms. Freidt determined that Appellant's actions constituted misconduct. Ms. Freidt  
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1 concluded that Appellant's behavior had a negative effect and damaged the agency's image and its  
2 ability to provide quality services. Ms. Freidt concluded that Appellant neglected her duty to  
3 conduct business with employers in a positive and professional manner and violated the agency's  
4 policies to provide quality customer services, engage in positive interactions, be helpful and  
5 cooperative, and use good judgment and tact.

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7 2.13 In determining the level of discipline, Ms. Freidt reviewed Appellant's 18-year employment  
8 history with the department. Ms. Freidt noted that Appellant had received previous letters of  
9 reprimands and a letter of suspension for similar behavior. Ms. Freidt determined that demotion  
10 was the best sanction, because the incidents here were not isolated and reflected a pattern of  
11 unprofessional behavior dating back many years. Ms. Freidt concluded the that demotion to a Tax  
12 Specialist 1 position was the most appropriate sanction because Appellant would continue to utilize  
13 her skills in tax work while working in a less demanding position with more supervision. By  
14 imposing the demotion, Ms. Freidt wanted to convey to Appellant the seriousness of her actions and  
15 the need to modify her behavior.

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17 2.14 Appellant's physician, Dr. Curtis, testified that he diagnosed Appellant with Spondylolysis, a  
18 condition that can cause acute pain to the lower back, which ranges from mild to severe. Dr. Lynne  
19 Anne Wilke testified that she diagnosed Appellant with Bipolar Disorder Type 1. Dr. Wilke  
20 described the disorder as having severe symptoms that include psychotic depression or mania, mood  
21 swings, irritability, and agitation. However, prior to Respondent's discovery of Appellant's  
22 misconduct here, Appellant did not request or otherwise notify Respondent of her need for  
23 reasonable accommodation because of either of her medial conditions. The only evidence that  
24 Appellant made a request for accommodation is dated May 2, 2000. The request addresses  
25 Appellant's lower back pain, however, Appellant made the request after the incidents which gave  
26 rise to this appeal.

### III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that there is no dispute that Appellant was rude to two customers who felt strongly enough to file formal complaints. Respondent argues that Appellant neglected her duty and willfully violated agency policy and directive that staff to treat customers with courtesy and respect. Respondent argues that maintaining adequate customer service is critical to the agency's mission and that Appellant's behavior had a negative impact on the agency's responsibility to the public. Respondent asserts that the agency worked with Appellant to help her meet the standards and expectations of her position and to ensure she understood the agency's policies. However, Respondent argues that Appellant failed to modify her behavior and continued to exhibit inappropriate workplace behavior. Respondent argues that it employed a program of progressive discipline, including letters of reprimand and a previous 10-day suspension. Respondent denies that Ms. Beard was "out to get" Appellant and contends Ms. Beard worked with Appellant to get her to improve her behavior. Respondent argues that it considered the mitigating factors that Appellant offered, including her back pain. Respondent asserts, however, that this factor did not explain Appellant's prior incidents of misconduct. Respondent asserts that Appellant had a responsibility to treat customers with respect despite whatever pain she may have been experiencing. Respondent further argues that Appellant's bipolar disorder was not cited as a factor in these incidents and it was not before the appointing authority to consider. Respondent argues that the demotion was reasonable because it placed Appellant in a less demanding job. Therefore, Respondent contends there is sufficient evidence to support the demotion.

3.2 Appellant argues the discipline was unwarranted and in violation of the merit system rules, and she denies her actions were malicious or willful. Appellant argues that she was given a performance evaluation only once in eight years, that a 10-range demotion is too harsh, and that Respondent failed to follow good personnel practices. Appellant contends she suffers from bipolar

1 disorder and severe back pain, was under a lot of stress and that she sought help from the agency.  
2 Appellant asserts that she was an 18-year employee, that Respondent could have taken other steps.  
3 Appellant asks that her appeal be granted.  
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#### 5 IV. CONCLUSIONS OF LAW

6 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
7 herein.  
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9 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
10 the charges upon which the action was initiated by proving by a preponderance of the credible  
11 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
12 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
13 Corrections, PAB No. D82-084 (1983).  
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15 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
16 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
17 of Social & Health Services, PAB No. D86-119 (1987).  
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19 4.4 Willful violation of published employing agency or institution or Personnel Resources  
20 Board rules or regulations is established by facts showing the existence and publication of the rules  
21 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
22 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).  
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24 4.5 In Maxwell v. Dep't of Corrections, 91 Wn. App. 171, 956 P.2d 1110 (1998), appellant  
25 Maxwell, a diabetic and manic depressive, asserted that the Board should excuse his admitted  
26 misconduct because it was caused by his medical condition. The Court of Appeals upheld the



1 Board's ruling that without evidence that appellant Maxwell's condition caused his behavior, he  
2 could not show he was disciplined because of his condition or discriminated against because of his  
3 condition. The Court also stated that an employer's duty to accommodate does not arise "unless  
4 there is a need for accommodation." The court, quoting from Goodman v. Boeing Co., 127 Wn.2d  
5 408, P.2d 1265 (1995), held that "the employee, of course, retains a duty to cooperate with the  
6 employer's efforts by explaining her disability and qualifications. . . . Reasonable  
7 accommodation thus envisions an exchange between employer and employee where each seeks and  
8 shares information to achieve the best match between the employee's capabilities and available  
9 position."

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11 4.6 In the case presented here, there is no evidence that Appellant's behavior was caused by  
12 either of her medical conditions. Furthermore, there is no evidence that Appellant made her  
13 employer aware of any need for accommodation until after the misconduct was reported.

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15 4.7 Respondent met its burden of proof that Appellant neglected her duty and violated agency  
16 policy when she failed to treat Ms. Longthorpe and Ms. Ramirez in an appropriate, courteous and  
17 professional manner. Appellant has a duty to work cooperatively with both internal and external  
18 customers and her continued inappropriate and negative behavior was contrary to agency policies  
19 and procedures and had a negative impact on the agency. The agency made repeated attempts to  
20 provide Appellant with guidance and direction to improve her level of customer service, however,  
21 Appellant failed to demonstrate any improvement.

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23 4.8 Although it is not appropriate to initiate discipline based on prior formal and informal  
24 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the  
25 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.  
26 D93-163 (1995).

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4.9 Under the facts and circumstances presented, a demotion from Tax Specialist 3 to a Tax Specialist 1 is appropriate, and the appeal should be denied.

**V. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Kathy Kinville is denied.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair